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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,023	11/07/2005	Gordon Cook	4140-0112PUS1	7457

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EXAMINER	
BROWN, MICHAEL A	

ART UNIT	PAPER NUMBER
3772	

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/523,023	COOK ET AL.	
	Examiner	Art Unit	
	Michael Brown	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-7 and 9-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3, 5-7 and 9-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson '262.

Johnson '262 discloses in figures 1-6 a device for use in applying impulse therapy to a limb of the human body comprising an inflatable bladder 6, means (1, 1a), for providing intermittent pulse of fluid to the bladder, means 3, for securing the bladder around the limb and the bladder includes a volume-reducing internal component 34, that is a foam material (urethane).

As for claims 7 and 9, Johnson '262 discloses a device for use in applying impulse therapy to a limb of the human body comprising a flexible pad 6, having an inflatable interior 9, means (1, 1a), for providing intermittent impulse of fluid, means 3, for securing the flexible pad around the limb, the inflatable interior is partially filled with a cellular component 34, providing means for reducing fluid flow rate, the cellular component is a foam material (urethane). In claim 8, no patentable weight was given to how the cellular component is formed.

As for claim 10, Johnson '262 discloses a device for use in applying impulse therapy to a limb of the human body comprising a flexible pad 9, having an inflatable

chamber 9, means (1, 1a), for providing intermittent impulse of fluid, means 3, for securing the flexible pad around the limb, a means 34, for reducing the internal volume of the chamber.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson '262 in view of Gorran.

Johnson '262 discloses in figures 1-3 an inflatable therapy device, substantially as claimed. However, Johnson doesn't disclose the internal component being a gel. Grorran teaches in figure 1 an inflatable device comprising an internal component that is a gel (col. 3, lines 15-20), used to inflate a bladder. It would been obvious to one having ordinary skill in the art at the time that the invention was made that the gel as taught by Gorran could be substituted for the internal component disclosed by Johnson because either internal component could be used to reduce volume in the inflatable device.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson '262 in view of Johnson '262.

Johnson '262 discloses in figures 1-6 a device for applying impulse therapy, substantially as claimed. However, Johnson doesn't disclose the internal component being a fluid reservoir. Johnson '262 teaches in figure 3 (a different embodiment), an

internal component 10, that is a fluid reservoir. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the internal component being a fluid reservoir as taught by Johnson could be substituted for the internal component disclosed by Johnson because either internal component could be used to reduce volume within the inflatable bladder. The foam is attached to the walls because the device is integral.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Grim '525.

Grim teaches in figure 7 foam 72, having channels (col. 4, lines 60-65), therein. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the foam disclosed by Johnson could be fabricated with channels as taught by Grim in order to allow air to flow along the channels inside of the inflatable bladder.

Response to Arguments

Applicant's arguments filed September 13, 2006 have been fully considered but they are not persuasive. Applicant argues that there is no explicit disclosure in either Johnson '262 or Johnson '945 of an inflatable bladder having a volume-reducing internal component means for dissipating the flow of fluid into the bladder with accompanying reduction in fluid flow rates and noise generated by the fluid flow during pressurization of the bladder in a time sequence of pressure hold and pressure release. However, Johnson '262 clearly discloses an inflatable bladder 6 and a volume-reducing internal component 34 that is made of foam. The examiner concurs that Johnson

doesn't disclose the a volume-reducing internal component is used for dissipating the flow of fluid into the bladder with accompanying reduction in fluid flow rates and noise generated by the fluid flow during pressurization of the bladder in a time sequence of pressure hold and pressure release. However, Johnson '262 doesn't have to disclose that the volume-reduction internal component is used to perform the same function as the volume-reduction internal component as disclosed in the present invention. Johnson '262 simply has to disclose a volume-reduction internal component that is cable of performing the same function. Both inventions have a foam pad inside of an inflatable bladder. Thus, the volume-reduction internal component disclosed by Johnson '262 renders the volume-reduction internal component of the present invention unpatentable. Clearly stated both inventions provide a foam pad inside of an inflatable bladder. Both foam pads are capable of performing the same function. Johnson '262 discloses a time sequence of pressure hold and pressure release. Applicant argues that there is no motivation for combining Johnson '262 with Gorran because they are used to perform different functions. However, Johnson '262 was used to set forth the environment of a device for use in applying impulse therapy to a human limb. Gorran was used as a modifier to substitute a gel for the foam. The gel and the foam are equivalent when it comes to reducing the internal volume of an inflatable bladder. Applicant argues that there is no evidence provided for substituting the gel for the foam. However, any object that is soft could be substituted for the gel or the foam in order to occupy space inside of the bladder. Even if the gel is freely dispersible throughout the bladder, it still will reduce the internal volume of the bladder. Applicant argues that isn't

clear why the examiner used Johnson'262 as the primary and second references. However, when a single reference discloses different embodiments (different inventions), it is proper to use the reference in a 103 rejection. The rejection was recited clearly, Johnson '262 as the primary reference and Johnson '262 as a secondary reference. Applicant argues that Grim and Johnson '262 are used to solve different problems. However, Johnson '262 was used to set forth the environment of a device for used in applying impulse therapy. Grim was used as a modifier to provide a teaching of having channels in a foam pad. Applicant argues that since the rejection of claims 4-6 wasn't proper this rejection should be made without it being a final rejection. However, the rejection of claims 4-6 was proper because using a single reference having different embodiments is properly made in a 103 rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown
November 16, 2006

MICHAEL A. BROWN
PRIMARY EXAMINER